

### REMARKS

This responds to the Final Office Action mailed on May 8, 2007.

Claims 1-27 are now pending in this application.

#### §103 Rejection of the Claims

Claims 1, 4-5, 8, 11-12, 15, 18-19, 21 and 24-25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the SquareTrade website (as viewed on the WayBack Machine from May 5, 2000; hereinafter SquareTrade) in view of eBay (as viewed on the WayBack Machine from October 12, 1999 ; hereinafter eBay).

Applicants respectfully submit that claims 1, 4-5, 8, 11-12, 15, 18-19, 21 and 24-25 should not be rejected under 35 U.S.C. § 103 for the reason that prior art references when combined do not teach or suggest all of the claim limitations of the independent claims of the present application.

To establish a **prima facie** case of **obviousness**, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.

Claim 1 includes the following limitation:

*updating a record associated with the party if the complaint is not resolved, the record indicating a count of failed transactions related to the party.*

The Final Office Action, in rejecting claim 1, contends that the above limitation is taught or suggested by eBay which describes a Feedback Forum (eBay, page 1). The Feedback Forum may be used by users on eBay to leave comments about other users (Id.). The Feedback Forum provides for an official “reputation” (Id.) for each user. Specifically, the Feedback Forum maintains, for each user, a Feedback Profile and a Feedback Rating. The Feedback Profile

includes comments about the user that have been left by other users (Id.). Comments may be about anything (Ebay, page 2). Each comment may be a positive comment worth +1 point, a neutral comment worth 0 points, or a negative comment worth -1 point. The Feedback Rating is a summation of the point values associated with the respective comments in the Feedback Profile. For example: “Skippy (125)” means that a user named Skippy is associated with 125 positive comments (Ebay, page 1).

Claim 1 requires updating a record associated with a party if a complaint is not resolved, the record indicating a count of failed transactions related to the party. In contrast, eBay merely describes a profile that includes comments and a rating. The comments may be about anything. The rating is a summation of the point values that correspond to the respective comments. Accordingly, eBay cannot be said to teach or suggest the limitations of claim 1.

The Final Office Action states the following:

The reference describes the operation [“point balance of comments”] on page 3, “If you were treated poorly, try to resolve the problem first by contacting the other person... If things are still not resolved, you may leave a negative comment.” Taking this into consideration, according to the feedback system, if the problem is not resolved, the user updates a record (feedback rating) associated with the party (user), wherein the record indicates a count of failed transactions related to the party.

Final Office Action, Page 4

The Applicants respectfully disagree for the reason that a negative comment cannot be said to denote a failed transaction. Specifically, a negative comment may pertain to successful transaction, which nonetheless is not entirely satisfactory to a party. For example, a payment may have been made and a product may have been shipped, but the shipping may have been slow or delayed. Accordingly, a negative comment regarding slow or delayed shipping does not denote a failed transaction. Another, example may include the delivery of a product that is not in a state advertised.

To be sure, the Applicants reviewed feedback on the eBay website and found the following “negative comments”:

“would not answer e-mail,slow shipping,will not deal with again!”

Ebay website, User Id - deltadelta48 (July 9, 2007).

"Book pages very faded &one falling out. Would not have bid if described right."

Ebay website, User Id - akdawghouse (July 9, 2007).

The above comments from the eBay website cannot be said to denote a failed transaction. For example, the first comment is negative with regard to slow shipping notwithstanding the transaction being successful. Further for example, the second comment is negative with regard to the condition of the book notwithstanding the transaction being successful.

The Final Office Action further states the following:

The fact that the feedback rating, or record, is not simply a discrete count of failed transactions does not distinguish the claim language over the prior art reference. The “record” of the eBay reference does, in fact, indicate a count of failed transactions. The eBay reference teaches that the record can be accessed in order to view all feedback that a user has received (page 2). According to this teaching, a user may view the complete record of another user, wherein the complete record indicates failed transactions associated with the user, denoted by “negative comments” left about the user.

Final Office Action, Page 4.

The applicants respectfully disagree. Specifically, viewing a record of a user which may include hundreds of comments over scores of webpages, the respective contents of which may be about anything, fails to suggest, much less teach a count of failed transactions related to the party, as required by the claim 1.

The above remarks are also applicable to a consideration of independent claims 8, 15, and 21.

In addition, if an independent claim is nonobvious under 35 U.S.C. § 103 then, any claim depending therefrom is nonobvious and rejection of claims 4-5, 11-12, 18-19 and 24-25 under 35 U.S.C. § 103 is also addressed by the above remarks.

Claims 2-3, 9-10, 16-17 and 22-23 were rejected under 35 USC § 103(a) as being unpatentable over SquareTrade in view of eBay, as applied to claims 1, 8, 15 and 21 above, and further in view of the article UAUTOBID (“UAUTOBID.com, Inc., Introduces the Capability to Purchase Specific Vehicles Online”).

Claims 2-3 depend on independent claim 1. Claims 9-10 depend on independent claim 8. Claims 16-17 depend on independent claim 15. Claims 22-23 depend on independent claim 21. If an independent claim is nonobvious under 35 U.S.C. § 103 then, any claim depending therefrom is nonobvious and rejection of claims 2-3, 9-10, 16-17 and 22-23 under 35 U.S.C. § 103 is also addressed by the above remarks.

Claims 6, 13, 20 and 26 were rejected under 35 USC § 103(a) as being unpatentable over SquareTrade in view of eBay as applied to claims 1, 8, 15 and 21 above, and further in view of Esposito (U.S. 6,587,838; hereinafter Esposito).

Claim 6 depends on independent claim 1. Claim 13 depends on independent claim 8. Claim 20 depends on independent claim 15. Claim 26 depends on independent claim 21. If an independent claim is nonobvious under 35 U.S.C. § 103 then, any claim depending therefrom is nonobvious and rejection of claims 6, 13, 20 and 26 under 35 U.S.C. § 103 is also addressed by the above remarks.

In summary, SquareTrade in combination eBay in combination with UAUTOBID in combination with Esposito does not teach or suggest each and every limitation of the independent claims 1, 8, 15, and 21 as required to support rejections of the independent claims of the present application under 35 U.S.C. § 103.

In summary, Applicants believe that all rejections presented in the Final Office Action have been fully addressed and withdrawal of these rejections is respectfully requested.

### **CONCLUSION**

Applicants respectfully submit that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' attorney at 408-278-4046 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

### **Reservation of Rights**

In the interest of clarity and brevity, Applicant may not have addressed every assertion made in the Office Action. Applicant's silence regarding any such assertion does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

RESPONSE UNDER 37 CFR § 1.116 – EXPEDITED PROCEDURE

Serial Number: 09/717,433

Filing Date: November 20, 2000

Title: METHOD AND SYSTEM FOR DEALING WITH NON-PAYING BIDDERS RELATED TO NETWORK-BASED TRANSACTIONS

Page 7

Dkt: 2043.023US1

Respectfully submitted,

LOU LEONARDO ET AL.

By their Representatives,

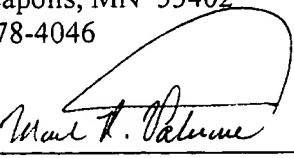
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.

P.O. Box 2938

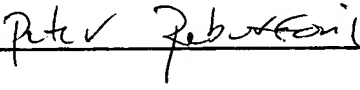
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Date 7/9/2007

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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 9 day of July 2007.

  
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